

REMARKS/ARGUMENTS

Claims 1-2 and 4-24 are pending in this application. Claims 1 and 21 have been amended, and claim 20 is canceled. Support for the claim amendments is found throughout the specification, for example, at page 9, line 26 to page 10, line 2, and page 11, lines 4-13. These amendments are made without prejudice to presentation of the original claims in a continuing application. No new matter is entered upon entry of these amendments. Claim 3 was previously canceled.

I. Objection to the Claims

Claim 21 was objected to because the term “without imaging” should be moved from after “directing” to after “detecting”. Although Applicants do not necessarily agree that this amendment is necessary, claim 21 has been amended in order to advance prosecution.

II. Rejections under 35 USC § 112

Claims 1-2 and 4-19 stand rejected under 35 U.S.C. § 112, second paragraph, as allegedly being incomplete for omitting essential structural relationships of elements. It is the Office’s position that the relationship between the reflective foil of the sealed container, the non-imaging detector, and the position or presence of the product relative to the foil container is unclear. Although Applicants do not necessarily concur, they have amended independent claim 1 to even more clearly recite the structural cooperative relationships of these elements. Claims 2 and 4-19 depend on claim 1 and include these limitations too.

Claim 20 has been cancelled and the rejection under 35 U.S.C. § 112, second paragraph, is therefore moot.

Claims 21-24 stand rejected under 35 U.S.C. § 112, second paragraph, as allegedly being incomplete for omitting essential structural relationships of elements. It is the Office’s position that the relationship between the reflective foil of the sealed container, the detected energy reflected by the foil, and the determined position or presence of the product in the container relative to the reflective foil is unclear. Although Applicants do not necessarily concur, they have amended independent claim 21 to even more clearly recite the cooperative

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relationships of these elements. Claims 22-24 depend on claim 21 and include these limitations too.

III. Double Patenting Rejections

Claims 1-2, 4-19 and 21-24 stand rejected under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claim 1-5, 8-12, 15, 22-24 and 19 of U.S. Patent No. 6,246,062. Although Applicants do not acquiesce in the Office's use of the '062 patent in applying this doctrine, Applicants are filing herewith a terminal disclaimer to overcome the obviousness-type double patenting rejections. Claim 20 has been canceled and the rejection for double patenting is therefore moot.

IV. Other Matters

Applicants kindly request an initialed copy of the PTO-1449 form of the Information Disclosure Statement filed with the Office on 11 September 2002.

IV. Conclusions

Applicants request the Examiner to:

- (1) enter the amendments to claims 1 and 21, and cancel claim 20;
- (2) reconsider and withdraw the standing rejections of the claims;
- (3) provide an initialed copy of the PTO-1449 form of the Information Disclosure Statement filed with the Office on 11 September 2002; and
- (4) pass claims 1-2, 4-19 and 21-24 to allowance.

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If the Examiner is of a contrary view, the Examiner is requested to contact the undersigned attorney at (215) 557-5984.

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